



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 21, 2015

Ms. Theresa Birlson
9520 Joilet Street
St. John, Indiana 46373

Re: Formal Complaint 15-FC-299; Alleged Violation of the Access to Public Records Act by the Town of St. John

Dear Ms. Birlson,

This advisory opinion is in response to your formal complaint alleging the Town of St. John ("Town") and Mr. Steven Kil, Town Manager violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Town responded via Mr. David Austgen, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 2, 2015.

BACKGROUND

Your complaint dated October 28, 2015 alleges the Town of St. John violated the Access to Public Records Act by not providing you with records you requested.

On October 26, 2015, you requested a copy of the proposed St. John Comprehensive Plan which would be discussed at a November 4, 2015 meeting. You also requested several other records related to this Plan. You were informed by the Town Manager the documents would not be available until November, 2015, because of the voluminous and technical nature of the request.

On November 20, 2015, the Town responded via counsel. Counsel acknowledges that Ind. Code § 36-7-4-507 requires a town publish the Comprehensive Plan at least ten (10) days prior to a public meeting on the plan. Counsel notes the Town made the Comprehensive Plan available to the public electronically on October 1, 2015. Counsel also notes the Town was deficient in not making the Plan personally available to you. Counsel contends that after the filing of this complaint, the Town remedied the deficiency by rescheduling the hearing.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Town of St. John is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Town’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(c).

After acknowledgement of a request is made, a public agency has a reasonable time to actually produce the documents requested. See Ind. Code § 5-14-3-3. A reasonable time is a subjected standard measured on a case-by-case basis. Indeed it appears as if some of the documents you requested would take less time than others to produce. While “reasonable” does not equate to “immediate” -production of documents should happen efficiently and without significant delay.

You filed your complaint a mere two (2) days after your request was posed to the Town based upon their timeline. The Town promised production within ten (10) business days of request. This is a reasonable time as contemplated by statute.

The outlier in your request, however, is the Town’s comprehensive plan. Ind. Code § 36-7-4-507 requires a town publish the Comprehensive Plan at least ten (10) days prior to a public meeting on the plan. While the Town did publish the plan on its website, it appears as if the Town’s October 26, 2015 letter to you led you to believe it was not available to you at that particular time.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

The Town conceded the oversight and rescheduled the hearing in order that you had a sufficient amount of time to obtain and inspect the plan. While the Town could have directed you to the website at the time of the request, it shows tremendous good faith by going through the inconvenience of rescheduling. It appears as if the Town went above and beyond by rescheduling the meeting. It is my sincere hope the Town's action has remedied any perceived oversight by not providing you access in a shorter amount of time.

CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Town of St. John did not violate the Access to Public Records Act.

Regards,

Luke H. Britt
Public Access Counselor

Cc: Mr. David Austgen, Esq.